




September 22, 2016

TO: Steve Mermell
City Manager

FROM: Matthew E. Hawkesworth 
Director of Finance

SUBJECT: Utility Users Tax Administrative Ruling – Over the Top Television

The purpose of this memo is to advise you that the Tax Administrator (Finance Director) has issued a ruling to assure that all "video programming" is treated the same, regardless of technology or service supplier. (See definition of "video programming" below.) The ruling interprets the existing language of the City's UUT ordinance, and applies it to OTT effective January 1, 2017. The City's UUT administrative rulings are located at www.uutinfo.org.

"Video programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

BACKGROUND

The City's voter-approved Utility Users Tax (UUT) applies to "video programming" regardless of the technology used to deliver such programming. Traditionally, "video services" only involved cable television; however, during the last decade or so, "video programming" similar to those programs provided by cable have been provided by a variety of companies using new technologies, including over satellite and broadband. Under federal law, "satellite TV" is exempted from local taxes.

Two of the largest telecom providers, Verizon and AT&T began offering cable-like services over their broadband networks (FIOS TV and U-verse). These two companies were successful in getting state legislation that provided for state video franchises in lieu of a local franchise (**THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 – PUC Sec. 440 et seq**). More recently, a variety of companies are now offering similar video services over the internet, called "over the top television" or OTT.

When the City sought voter approval of an updated UUT ordinance in 2008, the ballot measure specifically indicated that new definitions of taxable services would be technology-neutral so that users of such utility services would be treated the same, regardless of technology. Also, the UUT ordinance was amended to allow for the Tax Administrator to issue “administrative rulings” from time to time to provide guidance to the tax collecting utilities of their responsibility to collect the City’s UUT on their “video services” from the end-users.

During the past several months, and on advice of MuniServices (the City’s UUT consultant), numerous UUT cities with similar UUT ordinances that apply to “video services, including video programming” have discussed the need to issue an administrative ruling to providers of OTT “video programming services” (e.g., Hulu, Netflix, Sling TV, Fullscreen Media).